

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

)	
IN RE)	
)	
JEFFERSON COUNTY, ALABAMA, a political)	Case No. 11-05736-TBB9
subdivision of the State of Alabama,)	Chapter 9
)	
Debtor.)	

JOINDER OF CERTAIN LIQUIDITY BANKS IN SUPPORT OF (1) THE MOTION OF THE JEFFERSON COUNTY SEWER SYSTEM RECEIVER FOR (A) A DETERMINATION THAT THE RECEIVER SHALL CONTINUE TO OPERATE AND ADMINISTER THE SEWER SYSTEM PURSUANT TO THE RECEIVER ORDER OR (B) FOR RELIEF FROM THE AUTOMATIC STAY OR OTHER APPROPRIATE RELIEF AND (2) EXPEDITED MOTION OF INDENTURE TRUSTEE FOR JEFFERSON COUNTY’S SEWER WARRANTS FOR (A) THE COURT TO ABSTAIN FROM TAKING ANY ACTION TO INTERFERE WITH THE RECEIVERSHIP CASE AND THE RECEIVER’S OPERATION AND ADMINISTRATION OF SEWER SYSTEM IN ACCORDANCE WITH THE RECEIVERSHIP ORDER, OR (B) FOR RELIEF FROM THE AUTOMATIC STAY TO THE EXTENT NECESSARY TO ALLOW RECEIVER TO CONTINUE TO OPERATE AND ADMINISTER THE SEWER SYSTEM UNDER THE RECEIVERSHIP ORDER, AND (C) REQUEST FOR EXPEDITED HEARING

The Bank of Nova Scotia, Société Générale, New York Branch, State Street Bank and Trust Company, Lloyds TSB Bank plc, Regions Bank and The Bank of New York Mellon, each a Liquidity Bank and the beneficial holder of the Parity Securities¹ (collectively, the “*Liquidity Banks*”) are uniquely situated in this matter. In response to requests issued by Jefferson County, Alabama (the “*County*”) in the capital markets, these Liquidity Banks extended liquidity to the

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in (1) the EMERGENCY MOTION OF THE JEFFERSON COUNTY SEWER SYSTEM RECEIVER FOR (A) A DETERMINATION THAT THE RECEIVER SHALL CONTINUE TO OPERATE AND ADMINISTER THE SEWER SYSTEM PURSUANT TO THE RECEIVER ORDER OR (B) FOR RELIEF FROM THE AUTOMATIC STAY OR OTHER APPROPRIATE RELIEF [Docket No. 40] (the “*Receiver Motion*”) or (2) EXPEDITED MOTION OF INDENTURE TRUSTEE FOR JEFFERSON COUNTY’S SEWER WARRANTS FOR (A) THE COURT TO ABSTAIN FROM TAKING ANY ACTION TO INTERFERE WITH THE RECEIVERSHIP CASE AND THE RECEIVER’S OPERATION AND ADMINISTRATION OF SEWER SYSTEM IN ACCORDANCE WITH THE RECEIVERSHIP ORDER, OR (B) FOR RELIEF FROM THE AUTOMATIC STAY TO THE EXTENT NECESSARY TO ALLOW RECEIVER TO CONTINUE TO OPERATE AND ADMINISTER THE SEWER SYSTEM UNDER THE RECEIVERSHIP ORDER, AND (C) REQUEST FOR EXPEDITED HEARING [Docket No. 51] (the “*Trustee Motion*”) unless a different meaning is clear from the context.

County pursuant to customary underwriting criteria so that the County could satisfy its obligations under the Clean Water Act and its citizens would benefit from improvements to the County's Sewer System. Specifically, pursuant to Standby Warrant Purchase Agreements, the Liquidity Banks agreed to buy any Parity Securities that were tendered back to the Trustee, in its capacity as tender agent, if the tendered Parity Securities were not remarketed and purchased by other investors. A liquidity facility does not serve as a guaranty of repayment of principal and interest on debt owed to the holders of warrants, or as an agreement by the liquidity provider to take and hold warrants as a means of extending long-term credit to the issuer. Rather, such a facility simply serves as an accommodation to provide a temporary source of funds for payment of the purchase price of tendered warrants absent the availability of remarketing proceeds. The separate credit risk on the warrants (i.e., the risk of non-payment of principal and interest on the warrants when due) was borne by bond insurers who issued bond insurance policies that specifically insured the repayment of the warrants when due. When the warrantholders tendered their Parity Securities and the Parity Securities could not be remarketed, the liquidity facilities were drawn to pay the purchase price of the tendered Parity Securities. In full compliance with the terms of their respective Standby Warrant Purchase Agreements, the Liquidity Banks remain holders of approximately \$390,250,000 principal amount of the Parity Securities².

Mindful of the Court's admonition that parties-in-interest refrain from duplicating the arguments raised by the Receiver and the Indenture Trustee, the Liquidity Banks join in both the Receiver Motion and Trustee Motion and the relief sought therein. Further, the Liquidity Banks submit this Joinder to the Receiver Motion and Trustee Motion to highlight certain matters which

² Although the County agreed in the Standby Warrant Purchase Agreements to repurchase the warrants purchased by the Liquidity Banks pursuant to an expedited amortization, the County failed to do so. The bond insurer (in the case of the Liquidity Banks, Syncora Guarantee Inc.) then failed to provide coverage for County's default, as agreed, leaving the Liquidity Banks – the only party to perform fully its contractual obligations – holding hundreds of millions in Parity Securities.

have not been discussed but which the Liquidity Banks contend are relevant to the Court's examination of the issues before it.

A. THE INVESTING PUBLIC IS WATCHING THIS PROCEEDING WITH GREAT INTEREST. IF THE TREATMENT OF SPECIAL REVENUES IS NOT HONORED, THE EFFECTS COULD BE CATASTROPHIC TO THE BOND MARKET

At the time the Municipal Bankruptcy Amendments were adopted in 1988, there was great concern in the municipal bond market that the application of general commercial finance concepts rendered the extension of credit to a troubled municipality fraught with risk. *See an Act to Amend the Bankruptcy Law to Provide for Special Revenue Bonds, and for Other Purposes*, Pub. L. No. 100-597 (1988) ("*1988 Amendments*") (amending Chapter 9 of the U.S. Bankruptcy Code (the "*Bankruptcy Code*"). As is clearly set forth not only in the specific provisions added to Chapter 9 by the 1988 Amendments but also in the legislative history for the 1988 Amendments, Congress concluded that, without the 1988 Amendments, the uncertainty of the effect of Chapter 9 as it then existed on municipal debt could have dire effects. *See Senate Report No. 100-506*, 100th Cong., 2d Session, at 4 (1988) (the "*Senate Report*"). This was especially true with respect to concerns regarding the continuation of a lien on revenues in a Chapter 9 proceeding. The Senate Report made it clear that the intention of the 1988 Amendments was to address the real worry in the marketplace that revenues dedicated to the repayment of municipal revenue obligations would be diverted to other purposes once a local government entered bankruptcy; that this worry rendered clarification of the law a necessity; and that revenue debt could not be impaired in a Chapter 9. *Senate Report*, at 5.

The Parity Securities are secured by a pledge of special revenues. The risk noted and predicted by Congress in the Senate Report of instability to the municipal bond market in the United States if special revenues are not honored cannot be overstated. The Receiver and the Indenture Trustee's papers outlined the Constitutional basis for the continuation of the

Receivership. The Liquidity Banks also refer the Court to the risk of market instability specifically addressed by the drafters of the 1988 Amendments if the principles of special revenue debts are not respected. It is respectfully submitted that the principles underlying the 1988 Amendments cannot be abandoned without risking serious harm to municipalities throughout the United States.

B. THE BANKRUPTCY CODE PROTECTS A PLEDGE OF SPECIAL REVENUES UNDER STATE LAW

The 1988 Amendments to the Bankruptcy Code were enacted to ensure that municipal revenue bondholders receive the benefit of their bargain. In enacting the 1988 Amendments, Congress specifically recognized that “[t]he proposed amendments reflect principles that have long been the premise for municipal finance but have not been expressly stated in the Bankruptcy Code.” Senate Report, at 1. The Senate Report further stated:

The potential problems created by the incorporation of general commercial finance concepts into municipal bankruptcy provisions first came to light as a result of the financial crisis confronting the City of Cleveland, Ohio in 1979. Cleveland needed additional financing but lenders were unwilling to lend for a variety of reasons, including the incorporation into Chapter 9 of the general bankruptcy concepts of Section 552 of the Bankruptcy Code Thus the lenders who contemplated providing financing during financial troubles of the City were discouraged given the concern that their security interest might terminate upon a Chapter 9 filing of the city. . . . Such uncertainty may have dire effects in the future

As previously noted, revenue bonds have recourse solely to such revenue in the event of a default in payment. The provisions added to Chapter 9 of the Bankruptcy Code by the 1988 Amendments were intended to honor this structure. Specifically, section 928 provides that special revenues acquired by the debtor after the commencement of a bankruptcy case are subject to any lien granted on special revenues prior to the bankruptcy filing. 11 U.S.C. § 928.

Section 928 is intended to ensure that revenue bonds do not become transformed into general obligation bonds with a call against all the assets of the municipality upon the filing of bankruptcy petition.

Prior to the addition of section 928 to the Bankruptcy Code, section 552(a) of the Bankruptcy Code was applicable to revenue debt in a Chapter 9. That section provides that property acquired by a debtor after the commencement of the bankruptcy case is not subject to a lien created prior to the bankruptcy filing unless the acquired property constituted proceeds of the property pledged prior to the bankruptcy filing. 11 U.S.C. §552(a). The result of the application of section 552(a) in the municipal context generally was to strip the lien of revenue bondholders. Therefore, the revenue bondholders would become unsecured creditors with a claim against the post-petition revenues which had previously secured the revenue bonds and their claims would become part of the general obligations of the municipality. The general funds would then be used to pay all creditors including the revenue bondholders. As a result, rather than taking the risk that a specific revenue stream would be sufficient to pay debt service on their bonds, revenue bondholders were, in fact, taking the risk that the general fund of the municipality would not be sufficient to repay all debts of the municipality. Section 928 resolved this problem by providing that revenue bondholders continue to have a lien on post-petition special revenues. As the legislative history makes clear, the addition of section 928 was motivated by the desire to make it easier for municipalities to obtain needed financing for public projects. *See Senate Report*, at 4, 8 (discussing problems distressed municipalities may have in financing debt absent the 1988 Amendments).

In addition to providing that the lien on special revenues continues after a Chapter 9 filing, the 1988 Amendments also dealt with the problem of timely payment. In order to avoid the delay in payment caused by the automatic stay of section 362, the 1988 Amendments added a

new subsection to section 922 of the Bankruptcy Code that made the automatic stay inapplicable to the payment of pledged special revenues to the holders of municipal indebtedness. 11 U.S.C.

§ 922(d). As observed in the Senate Report:

This provision [Section 362] is overly broad in Chapter 9 requiring the delay and expense arising from a request for relief from automatic stay to accomplish what many state statutes mandate: the application of pledged revenues after the payment of operating expenses to the payment of secured bonds. The automatic stay should specifically be inapplicable to application of such revenues.

Senate Report, at 11.

In fact, as the Senate Report further noted:

Reasonable assurance of timely payment is essential to the orderly marketing of municipal bonds and notes and continued municipal financing.

Id. at 21.

The clear intent of Congress in enacting the 1988 Amendments was to provide assurances to the capital markets that special revenues essential to municipal financing remain unimpaired in the event of a Chapter 9 filing:

To eliminate the confusion and to confirm various state laws and constitutional provisions regarding the rights of bondholders to receive revenues pledged to them in payment of their debt obligations of a municipality, a new section is provided in the amendment to ensure that revenue bondholders receive the benefit of their bargain with the municipal issuer and *that they will have unimpaired rights to the project revenues pledged to them.*

New Section 927 [928] along with the definition of Special Revenues in Section 902(3) protect the lien on revenues.

Id. at 12 (emphasis added).

In sum, Congress made clear that revenue bondholders are entitled to receive the revenues pledged to them without any interference and on a timely basis.

Here, the Receiver has been appointed by the Receivership Court with the “sole and exclusive right to receive, collect, take possession of and preserve all accounts, incomes, profits and other revenues generated from and by the System that the Receiver in its business judgment may deem necessary for the administration of the operation of the System” *The Bank of New York Mellon, as Indenture Trustee v. Jefferson County Alabama*, Case No. CV-2009-02318, Order at 9 (Ala. Cir. Ct. Sept. 22, 2009) (attached to Receiver’s Motion as Ex. A). Pursuant to a final order of an Alabama State Court issued pursuant to Alabama state law, the Receiver has custody and control of the collateral for the payment of the Parity Securities. *Id.*, at 8. Consistent with, and in furtherance of, the clear intent of Congress as stated during the enactment of the 1988 Amendments that liens and protections on revenues of the Debtor continue inviolate after the filing of a Chapter 9.

C. THE PARITY SECURITIES ARE SECURED BY SPECIAL REVENUES OF THE SEWER SYSTEM PROTECTED BY STATE STATUTE AND ARE NOW WITHIN THE JURISDICTION OF THE STATE COURT AND THE STATE COURT-APPOINTED RECEIVER

From time to time, to finance an income-producing project for an essential governmental purpose, municipalities issue revenue bonds payable solely from the revenues of the project or system (rather than finance such a project with general obligation debt, *i.e.*, debt payable from the general funds of the municipality including tax receipts). To assure that the revenues generated by such projects are not converted to other purposes, municipalities pledge or assign such revenues as security for such debt under the applicable bond documents and specific enabling statutes that provide express authority for the creation and perfection of the pledge of such revenues on an ongoing basis. Where bonds are secured by the revenues of a special fund, bondholders have long been recognized to have an absolute right to receive those revenues that

cannot be diverted to other purposes, including the payment of general obligations of a municipality. *See U.S. Trust Co. of New York v. New Jersey*, 431 US 1, 17-32 (1977).

As both section 928 of the Bankruptcy Code and the underlying legislative history of the 1988 Amendments make clear, the Indenture Trustee's lien on the net revenues of the Sewer System cannot be impaired in a Chapter 9 bankruptcy. *See Senate Report*, at 12 ("the amendments ensure that revenue bondholders receive the benefit of their bargain with the municipal issuer and that they will have unimpaired rights to the project revenues pledged to them."). The Liquidity Banks entered into the Standby Warrant Purchase Agreements with the expectation that the remedies of the Indenture, including the ability to have a Receiver appointed upon the occurrence of an event of default, could not be interfered with in the event of a Chapter 9 filing and that the pledge of special revenues could not be undermined. This structure, in which the Parity Security Holders look not only to pledged net revenues but also to the ability to protect project revenues from improper actions on the part of government officials through the appointment of a receiver, is common in transactions throughout the United States and provides assurance to investors that warrants will not be jeopardized through impairment of the revenues pledged as collateral.

D. ALABAMA STATUTE RECOGNIZES AND PROTECTS A PLEDGE AND ALLOWED CLAIM THAT CANNOT BE INTERFERED WITH

The Parity Securities were issued pursuant to an Alabama statute which creates a pledge of revenues in favor of the holders. *See ALA. CODE § 11-28-1, et seq.* Section 11-28-3 of the Alabama Code provides, in relevant part,

The pledge of any pledged funds for the payment of the principal of and interest on warrants issued by any county pursuant to this chapter, together with any covenants of such county relating to such pledge, shall have the force of contract between such county and the holders of such warrants. To the extent necessary and sufficient for making the payments secured by any pledge of

pledged funds made pursuant to the provisions of this chapter, *such pledged funds shall constitute a trust fund or funds which shall be impressed with a lien in favor of the holders of the warrants to the payment of which such pledged funds are pledged. . . . All warrants for which any pledge authorized by the provisions of this Chapter may be made shall constitute preferred claims against that portion of the pledged funds so pledged and shall have a preference over any claims for any other purpose whatsoever.* (Emphasis added.)

Id., § 11-28-3 (emphasis added).

It is clear that, under the Alabama Code, the Indenture Trustee for the Parity Securities holds a pledge of the net revenues and other funds of the Sewer System and that no other creditors or any governmental entity have a right or claim to such pledged funds superior to that of the Indenture Trustee.

Further, section 11-28-6 of the Alabama Code specifically provides for the *allowance* of the claim based upon the warrants.

The issuance of warrants and any interest coupons applicable thereto, pursuant to the provisions of this chapter and in accordance with the authorization of the county commission of the county issuing such warrants, shall be deemed to constitute an audit or allowance by such county commission of a claim, in the aggregate amount of such warrants and the interest thereon, against such county and *against any pledged funds pledged for the payment of the principal of and interest on such warrants pursuant to the provisions of this chapter.* No proof of registration or other audit or allowance of such claim shall be required and *such warrants and the interest thereon shall, from and after the date of their lawful issuance, be deemed to be allowed claims against the County by which they were issued and against any pledged funds so pledged therefore.*

Id., § 11-28-6 (emphasis added).

Thus, pursuant to Alabama statute, the Indenture Trustee has an allowed claim for the amount due on the Parity Securities. Neither the Bankruptcy Court, nor the County, nor other creditors can challenge this allowed claim as any such challenge in itself would constitute a violation of Alabama state law.

The Parity Securities are not payable from the general funds or taxing power of the County. Rather, the pledge under the Indenture pursuant to Alabama statute of the net revenues of the Sewer System to the Parity Securityholders cannot be adjusted or taken away, altered, amended or interfered with by the Bankruptcy Court in a Chapter 9 proceeding. As previously noted, this is consistent with the explicit language of Chapter 9 as well as the underlying legislative history which specifically provided that the special revenues and pledge of special revenues to the payment of securities is to continue post-petition and without interference or impairment.

The significance of liens on special revenues³ was illustrated recently by the case of *Sierra Kings Health Care District*, in which a court order reaffirmed the fact that a Chapter 9 proceeding and any order or Plan of Debt Adjustment cannot interfere with notes, bonds or municipal obligations that are paid from the pledge of taxes or revenues which are special revenues or subject to a statutory lien. *In re Sierra Kings Health Care Dist.*, Case No. 09-19728 [Docket No. 384] (Bankr. E.D. Cal. Sept. 13, 2010); *see also In re Orange County*, 189 B.R. 499 (CD Cal. 1995) (lien securing tax and revenue anticipation notes pursuant to California statute authorizing county to pledge assets to secure notes was statutory lien); *In re Sierra Kings Health Care Dist.*, *supra* (Chapter 9 proceeding and any order or Plan of Debt Adjustment cannot interfere with notes, bonds or municipal obligations paid from pledge of taxes or revenues which are special revenues or subject to a statutory lien). Thus, pursuant to both the constitutional arguments asserted by the Receiver and the Indenture Trustee and applicable state law, the net revenues are not subject to adjustment by this Court and the Receiver must stay in place. The

³ In addition to the protections afforded to the warrant holders through the County's pledge of special revenues, the warrants are secured by a statutory lien. *See* ALA. CODE § 11-28-3. No funds impressed with the statutory lien can be used by the County for general purposes since revenues are to be used for the operation and maintenance of the System and debt service on the Parity Securities.

failure to do so would cause the serious financial consequences that legislative history indicates the 1988 Amendments were specifically designed to avoid.

E. THE BANKRUPTCY CODE PROVIDES NO MEANS FOR THE BANKRUPTCY COURT TO PROTECT THE SPECIAL REVENUES IF THE RECEIVER IS REMOVED

As set forth above, the Bankruptcy Code grants broad protections to creditors that hold an interest in special revenues. Moreover, based on the legislative history and the provisions of Chapter 9, it is clear that Congress intends to protect not only such creditors' interests but the municipal capital markets as a whole by assuring a smooth functioning of such markets even in the case where a municipality files for Chapter 9. Should this Court not grant the relief requested in the Motions, this Court will have lessened, perhaps irreparably, the protection accorded special revenues under the Bankruptcy Code, state law and the Indenture by divesting the holders of the Parity Securities of a key equitable and contractual remedy for the County's failure to administer properly the system and the revenues it generates – the Receiver. Continuation of the Receivership is critical because section 901 omits section 1104, and its attendant powers to appoint a trustee or examiner, from those applicable in a case under Chapter 9. Thus, the Court would be left without any remedy were any misconduct, misappropriation or malfeasance to occur in respect of the operation of the Sewer System. Accordingly, in light of the provisions of Chapter 9, the 1988 Amendments, the legislative history relating to the 1988 Amendments and the findings, rulings and orders of the State Courts of Alabama, the Liquidity Banks respectfully request this Court grant the relief requested in the Motions.

WHEREFORE, the Liquidity Banks request this Court grant the relief requested in the Motions and such other and further relief as is just.

Respectfully submitted on this 16th day of November, 2011.

THE BANK OF NOVA SCOTIA, SOCIÉTÉ
GÉNÉRALE, NEW YORK BRANCH, STATE
STREET BANK AND TRUST COMPANY,
LLOYDS TSB BANK PLC AND THE BANK OF
NEW YORK MELLON

By their counsel:

/s/ Stephen B. Porterfield
Stephen B. Porterfield
SIROTE & PERMUTT
2311 Highland Avenue South
Birmingham, Alabama 35205
Tel: (205) 930-5278
Sporterfield@sirote.com

-and-

/s/ James E. Spiotto
James E. Spiotto, Esq.
(Admitted Pro Hac Vice)
Ann Acker, Esq.
(Admitted Pro Hac Vice)
Laura Appleby, Esq.
(Admitted Pro Hac Vice)
CHAPMAN AND CUTLER LLP
111 West Monroe Street
Chicago, Illinois 60603
Telephone: (312) 845-3000
Facsimile: (312) 701-2361
spiotto@chapman.com
acker@chapman.com
appleby@chapman.com

*Counsel to Bank of Nova Scotia and Lloyds TSB
Bank Plc*

-and-

/s/ Jack J Rose
Jack J Rose
ASHURST LLP
7 Times Square
New York, New York 10036
Telephone: (212) 205-7000
Facsimile: (212) 205-7020
Jack.Rose@Ashurst.com

Counsel to Société Générale, New York Branch

-and-

/s/ William W. Kannel
William W. Kannel, Esq.
(Admitted Pro Hac Vice)
Adrienne K. Walker, Esq.
(Admitted Pro Hac Vice)
MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO, PC
One Financial Center
Boston, Massachusetts 02111
Telephone: (617) 542-6000
Facsimile: (617) 542-2241
wkannel@mintz.com
awalker@mintz.com

*Counsel to State Street Bank and Trust
Company*

-and-

/s/ Jayna Partain Lamar
Jayna Partain Lamar
MAYNARD, COOPER AND GALE, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203
Telephone: (205) 254-1000
Facsimile: (205) 254-1999
JLamar@maynardcooper.com

Counsel to Regions Bank

-and-

/s/ Thomas C. Mitchell
Thomas C. Mitchell
(Motion Pending for Admission Pro Hac
Vice)
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
Telephone: (415) 773-5700
Facsimile: (415) 773-5759
Tcmitchell@orrick.com

Counsel to The Bank of New York Mellon

